

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Ida Mae Barr	:	
-vs-	:	06-0445
Peoples Gas Light and Coke Company	:	
	:	
Complaint as to billing/charges	:	
in Chicago, Illinois.	:	

POST EXCEPTIONS PROPOSED ORDER

Procedural History

On June 13, 2006, Ida Mae Barr ("Complainant") filed a complaint against The Peoples Gas Light and Coke Company ("Respondent" or "Peoples Gas") with the Illinois Commerce Commission ("Commission") alleging that she was improperly billed for gas services for the second floor of her property at 5112 South Union, Chicago, Illinois ("the Property"), in the amount of \$3,760.99.

Pursuant to notice given in accordance with the law and the rules of the Commission, this matter came on for status hearings on July 6 and August 3, 2006 before a duly authorized Administrative Law Judge ("ALJ") of the Commission at its offices in Chicago, Illinois. Both Complainant and Respondent were represented by counsel. On September 7, 2006, an evidentiary hearing was held. Complainant testified on her own behalf. Brian Schmoldt, a billing specialist with Respondent, testified on behalf of Peoples Gas. At the conclusion of the hearing on September 7, 2006, the record was marked "Heard and Taken." At the ALJ's request, the parties filed Draft Proposed Orders. A Proposed Order was served on the parties on November 2, 2006. Respondent filed a Reply to the Order on November 6, 2006 and Exceptions on November 20, 2006

Evidence

Complainant stated that she has been the owner of the Property, a two-flat, since November 10, 1970. On March 3, 2003, a fire occurred on the second floor of the Property. Complainant testified that she and her daughter, the second floor tenant, moved out of the Property after the fire. Peoples Gas' records show that the gas for the second floor was shut off and locked off at the customer's request on March 19, 2003. Complainant moved back to her first floor apartment in January 2004. She testified that the second floor apartment, prior to the fire had a gas meter only for cooking gas and that it was not re-occupied until March 2005. The gas was never turned off for the first floor of the Property.

Mrs. Barr testified that in October 2004 a new furnace was put into the rear of the second floor apartment. She stated that she never checked the gas meter for the second floor apartment between March 2003 and March 2005. In March 2005, when the second floor apartment was again occupied, Complainant called Respondent to have service restored in her name to the second floor apartment. Thereafter, Complainant received a bill for gas usage for the second floor apartment between March 2003 and March 2005 for \$3,760.99. Complainant testified that the second floor apartment was vacant from March 2003 to March 2005. No one lived in the apartment and no one benefited from the gas used in the apartment.

Mr. Schmoldt testified that according to company records gas service was turned off and locked off to the second floor of the Property on March 19, 2003. Company records show that subsequently the second floor meter was read by a remote reading device-. Actual 2004 readings occurred on March 3, April 29, June 27, July 28, August 30, September 30, October 28, November 21, December 31. The meter was also read on March 1, 2005. All of these readings showed gas usage on a gas line that company records indicate should have been shut off. None of these readings resulted in a bill to the Complainant or her daughter, the former tenant. These readings also -did not trigger a service call by respondent to turn off the gas for which no one was being billed.

On March 4, 2005, Complainant requested the restoration of gas service to the second floor. Respondent's service person went out to restore service and discovered that the gas service ~~(Respondent's Exhibit 1B)~~ to the second floor was already on.

Schmoldt testified that company records show that on March 16, 2005, the meter to the second floor was removed, tested and found to be working within the parameters set by the Commission. He testified that Bennie Barr was the customer of record for the second floor when service was cut-off on March 19, 2003. He testified that when the unauthorized gas usage was discovered in March 2005, Complainant was billed as the owner of the Property. He stated that on March 4, 2005, Respondent issued a bill to Complainant for the period of March 19, 2003 to March 4, 2005 in the amount of \$3,760.99. ~~Of this amount, \$1782.93 represents that portion of the bill for gas service not presented to the Complainant, a residential customer, within one year from the time it was incurred.~~

Company records state that a lock was put on the second floor gas meter when the service was turned off to prevent unauthorized gas usage. Respondent presented no evidence that the lock was broken, removed or circumvented by the Complainant. Respondent presented no reports concerning the presence or condition of the lock when the serviceman went to turn it back on in March 2005. No reports of tampering were filed.

Commission Analysis and Conclusions

~~Complainant contends that for much of the period between March 2003 and March 2005, actual readings were made by Peoples Gas of the Property's second floor gas meter, yet she never received a bill for gas service during that time period and no one resided on the second floor. Only when she applied for gas service in March 2005 was she billed for the March 2003-March 2005 period. Because no one resided on the second floor and she did not receive the benefit of gas service, she contends she should not be responsible for the \$3,760.99 gas bill.~~

There was a fire in Complainant's two flat on March 3, 2003. The Property structure in question is a two flat that had two gas meters. The meter on the second floor had been used solely for cooking gas prior to the fire. Complainant's daughter, who had resided in the second floor apartment, requested that gas be turned off to the second floor shortly after the fire. Complainant testified that no one resided in the second floor apartment during that period. Only when she applied for gas service in March 2005 was she billed for gas for the March 2003-March 2005 period. She asserts that because no one resided on the second floor during that time, she was unaware of gas usage and did not receive the benefit of gas service. She contends that she should not be responsible for the \$3,760.99 gas bill.

Subsequent to the fire, there were ten actual gas readings in 2004 and 2005 on that meter showing gas usage. Mr. Schmoldt's of Peoples Gas explained that no bill was sent because there was no customer of record to bill for the service. He did not explain why, using this logic, Mrs. Barr, the building owner of record for the whole period, the building owner became responsible for the unbilled gas after the fact when she requested in 2005 that service be restored to the unit. Complainant She had been occupying the first floor and apparently keeping current on the gas bill for the first floor meter from the time of the fire through March of 2005. Her uncontradicted ~~and unimpeached~~ testimony is that no one lived in the second floor apartment during the period in question. Her uncontradicted ~~and unimpeached~~ testimony is that she had a furnace installed in the 2nd floor apartment in October 2004, that the installers did not tell her that the gas was connected or heating the unit. She said she called the Company to get the gas turned on when her tenants moved in, in March 2005.

Respondent offered no explanation why the frequent readings showing nearly \$3800 of unbilled and unauthorized usage on a cooking gas account did not trigger a service call. Respondent offered no explanation as to how the supposedly locked off meter came to be in use. There is no indication in the record exactly when the unauthorized gas usage commenced, other than that gas was being used prior to as of the meter reading in March 2004.

Had the complainant known that gas was flowing through the 2nd floor meter or that the 2nd floor premises were already being heated or supplied with ~~cooking~~ gas, it is not clear why she would have requested that the 2nd floor service meter be turned back on or, why she would ask that the account be placed in her name. Assuming that the Respondent's course of conduct would have continued unabated, the second floor unit could have enjoyed unbilled gas service for an indefinite period as long as no one requested that the already "on" service be restored.

Respondent cites a 1984 Commission decision which denied the complaint of a management firm operating a 300 unit apartment complex claiming that electrical usage in about six vacant apartments was not its responsibility. The Commission in that case rejected the Complaint, finding that the Complainant knew or should have known of the usage in the vacant apartments. That case is distinguishable from this one. In this case the Complainant is not a professional property manager but an elderly woman in poor health who, unlike the complainant in the 1984 decision, had requested, as reflected in Company records, that service be terminated to the apartment shortly after the fire that caused her daughter to vacate the premises. Moreover, the Respondent knew that gas was being used in a locked off meter and took no steps to investigate or terminate the usage

An examination of all the evidence leads us to conclude that ~~it is likely that~~ gas service to the second floor may never have been turned off. In any event, we find that it would be unjust to allow the Respondent to collect a bill for thousands of dollars of unauthorized gas consumption from a party who apparently received no benefit from it. ~~while Respondent was aware of made ten actual readings of the unbilled usage over the period March 2004 through March 2005 and failed to investigate or did nothing to stop it the gas usage.~~

We conclude that that the complaint should be granted

Findings and Ordering Paragraphs

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) The Peoples Gas Light and Coke Company is a "public utility" as defined in the Illinois Public Utilities Act;
- (2) the Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (3) the findings of fact and conclusions of law reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and findings of law;

(4) the complaint filed by Ida Mae Barr against The Peoples Gas Light and Coke Company on June 13, 2006 is granted;

(5) Peoples Gas Light and Coke ~~C~~eompany is barred from collecting the bill for \$3,760.99 from Ida Mae Barr for gas usage for the second floor of her property at 5112 South Union, Chicago, Illinois.

IT IS THEREFOR ORDERED by the Illinois Commerce Commission that the complaint filed by Ida Mae Barr against The Peoples Gas Light and Coke Company be, and is hereby, granted.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final, its is not subject to the Administrative Review Law.

~~DATED: November 2, 2006~~

~~BRIEFS ON EXCEPTIONS DUE: November 21, 2006~~

~~REPLY BRIEFS ON EXCEPTIONS DUE: November 30, 2006~~

~~Terrance A. Hilliard~~

~~Administrative Law Judge~~

~~By Order of the Commission this 20th day of December, 2006.~~

~~(SIGNED) CHARLES E. BOX~~

~~Chairman~~